

Article 3. Variances**§66260.21. Petitions for Equivalent Testing or Analytical Methods.**

(a) The Department shall only grant a variance from the provisions of this chapter to allow use of a test method or analytical method alternative to that prescribed in chapter 11 of this division for use in classifying a specific non-RCRA hazardous waste or a RCRA hazardous waste if the proposed testing or analytical method has been added to 40 CFR Parts 261, 264, or 265 per 40 CFR section 260.21. For the variance to be granted, the applicant must show to the satisfaction of the Department that the proposed alternative test method or analytical method is equal or superior to the appropriate corresponding method in chapter 11 of this division, when applied to the specific waste with respect to accuracy, precision, sensitivity and stringency.

(b) An application for a variance pursuant to section 66260.21(a) shall include all of the following:

- (1) the name and address of the generator of the waste and where the waste is located;
- (2) a complete description of the waste, including its composition and source or process of generation;
- (3) a complete description of the proposed alternative test method or analytical method, including all equipment and procedural steps used;
- (4) a comparison of results obtained from a statistically significant number of replicate trials with the proposed alternative test method or analytical method with those results obtained from use of the appropriate corresponding method prescribed in chapter 11 of this division when both methods are applied simultaneously to the applicant's waste;

(5) an assessment of any factors which might interfere with or limit the applicability of the proposed test method or analytical method;

(6) a description of the quality control and quality assurance procedures to be followed to ensure the accuracy, precision, sensitivity and stringency of the proposed test method or analytical method.

(c) The Department shall, within 60 days after receipt of an application for a variance pursuant to section 66260.21(a), notify the applicant that the application is complete and accepted for processing by the Department or that the application is incomplete and what further information is required.

(d) The Department shall, within 180 days of receipt of a complete application for a variance pursuant to section 66260.21(a), notify the applicant that the request for a variance is granted or denied.

(e) If the variance requested pursuant to section 66260.21(a) is denied, the Department shall provide to the applicant in writing the reason for the denial.

NOTE: Authority cited: Sections 208 and 25159, Health and Safety Code and Section 15376, Government Code. Reference: Sections 25141, 25143 and 25159.5, Health and Safety Code and Section 15376, Government Code.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).

§66260.22. Petitions to Include Other Wastes Under Chapter 23.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations contained in chapter 23 of this division shall petition for a regulatory amendment under this section and Government Code section 11340.6.

(b) To be successful, the petitioner shall demonstrate to the satisfaction of the Director that regulation under the Universal Waste Rule contained in chapter 23 of this division:

- (1) is appropriate for the waste or category of waste;
- (2) will improve management practices for the waste or category of waste; and
- (3) will improve implementation of the hazardous waste program.

(c) The petition shall include the information, in writing, required by Government Code section 11340.6.

(d) The petition shall address as many of the factors listed in section 66260.23 as are appropriate for the waste or waste category addressed in the petition.

(e) The Director will evaluate and grant or deny petitions using the factors listed in section 66260.23 and the petition review process specified in Government Code section 11340.7. The decision will be based on the weight of evidence showing that regulation under chapter 23 of this division is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

NOTE: Authority cited: Sections 25159 and 58012, Health and Safety Code. Reference: Section 25159.5, Health and Safety Code; and 40 CFR Section 273.80.

HISTORY

1. New section filed 2-3-2003; operative 2-3-2003 (Register 2003, No. 6).
2. Amendment of subsection (a) and amendment of NOTE filed 2-13-2003; operative 3-15-2003 (Register 2003, No. 7).

§ 66260.23. Factors for Petitions to Include Other Wastes Under Chapter 23.

The Director will evaluate petitions submitted under section 66260.22 using the following factors:

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in article 4 of chapter 11 of this division, or if not listed, a proportion of the waste stream exhibits one or more characteristics of

hazardous waste identified in article 3 of chapter 11 of this division. [When a characteristic waste is added to the universal waste regulations in chapter 23 by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste in section 66273.9 of chapter 23 will be amended to include only hazardous waste portions of the waste category (e.g., hazardous waste batteries).] Thus, only the portion of the waste stream that exhibits one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of chapter 23;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, governmental organizations, as well as large industrial facilities);

(c) The waste or category of waste is generated by a large number of generators and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to sections ~~66273.13~~, 66273.33, 66273.33.5, and 66273.52; and/or applicable Department of Transportation requirements) would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or waste category under chapter 23 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems (e.g., the municipal wastestream, non-hazardous industrial or commercial wastestream, municipal sewer or stormwater systems) to recycling, treatment or disposal in compliance with this division and division 20 of the California Health and Safety Code;

(g) Regulation of the waste or category of waste under chapter 23 will improve implementation of and compliance with the hazardous waste regulatory program; and/or;

(h) Such other factors as may be appropriate.

NOTE: Authority cited: Sections 25159 and 58012, Health and Safety Code. Reference: Section 25159, Health and Safety Code; and 40 CFR Section 273.81.

HISTORY

1. New section filed 2-3-2003; operative 2-3-2003 (Register 2003, No. 6).

2. Amendment filed 2-4-2009; operative 2-4-2009 (Register 2009, No. 6).

§66260.200. Classification of a Waste as Hazardous or Nonhazardous.

(a) A waste shall be classified a hazardous waste if it meets the definition of a hazardous waste in section 66261.3.

(b) No person shall deviate from the provisions of this chapter in the management of a hazardous waste, except as provided for in section 66260.200(f) or section 66260.210.

(c) It shall be the generator's responsibility to determine if the waste is classified as a hazardous waste pursuant to section 66260.200(a). If the generator determines that the waste is hazardous, the waste shall be managed pursuant to the provisions of this division. If the generator determines that the waste is nonhazardous, the generator, except as provided for in section 66260.200(f), may either proceed to manage the waste as nonhazardous or apply to the Department for concurrence with the nonhazardous determination through the notification procedure set forth in section 66260.200(d) before managing the waste as nonhazardous. A generator who incorrectly determines that a hazardous waste is nonhazardous and fails to manage the waste pursuant to the provisions of this division is in violation of the requirements of this division and is subject to enforcement action.

(d) If a person chooses to obtain departmental concurrence with the nonhazardous waste determination, a notification shall be submitted to the Department which includes all information required by section 66260.200(m). Pending concurrence by the Department pursuant to section 66260.200(e), that person shall manage the waste as hazardous waste.

(e) The Department, within 30 days of receipt of a notification pursuant to section 66260.200(d), shall acknowledge in writing receipt of the notification. Within 60 days of receipt of a notification, the Department shall notify the sender of the notification in writing that concurrence with that person's classification of the waste as nonhazardous is approved, disapproved, or that the notification is incomplete or inadequate and what additional information is needed. Upon receipt of the additional information, the Department, within 60 days of receipt of the additional information, shall notify the sender of the notification in writing that concurrence of that person's classification of the waste as nonhazardous is approved or disapproved. The notification shall be considered disapproved if the sender of the notification fails to provide the additional information within 90 days from the date the information was requested. However, that person may request in writing an extension, up to 90 days, within which the information shall be submitted or the notification shall be considered disapproved.

(f) If a person wishes to classify and manage as nonhazardous a waste which would otherwise be a non-RCRA hazardous waste because it has mitigating physical or chemical characteristics which render it insignificant as a hazard to human health and safety, livestock and wildlife, that person shall apply to the Department for its approval to classify and manage the waste as nonhazardous. The application for approval shall include the information required by section 66260.200(m). The Department, within 30 days of receipt of the application, shall acknowledge in

writing receipt of the application. Pending written approval by the Department, the applicant shall manage the waste as hazardous waste. Within 60 days of receipt of an application, the Department shall notify the applicant in writing that the application for classification and management of the waste as nonhazardous is approved, disapproved, or that the application is incomplete or inadequate and what additional information is needed. Upon receipt of the additional information, the Department, within 60 days of receipt of the additional information, shall notify the applicant in writing that the application for classification and management of the waste as nonhazardous is approved or disapproved. The application shall be considered disapproved if the applicant fails to provide the additional information in writing 90 days from the date the information was requested. However, the applicant may request, in writing, an extension up to 90 days, within which the information shall be submitted or the application shall be considered disapproved.

(g) The Department may find that the notification submitted by a person pursuant to section 66260.200(d) or the application submitted pursuant to section 66260.200(f) is incomplete or inadequate for reasons which may include any of the following:

- (1) the application is not complete or there is insufficient information on which to classify the waste; or
- (2) the methods used in testing or analyzing the waste are not those prescribed in chapter 11 of this division, or have not been approved by the Department pursuant to section 66260.21(a) as alternative methods; or
- (3) sampling and sample management were not in accord with Appendix I of chapter 11 and Table 3 of Appendix III of chapter 11; or
- (4) representative samples of the waste are required pursuant to section 66260.200(k) in order that the Department may independently assess the properties of the waste.

(h) If the Department disapproves of a person's determination that a waste is nonhazardous or a person's application to manage as nonhazardous a waste which would otherwise be a non-RCRA hazardous waste, the Department shall give in writing the reason for the disapproval.

(i) If the Department at any time finds that the information submitted or generated for a determination pursuant to section 66260.200(c), a concurrence pursuant to section 66260.200(d) or an approval pursuant to 66260.200(f) was erroneous for any of the following reasons, the Department may notify that person in writing of the deficiencies:

- (1) the results given in the laboratory report or other submitted data demonstrate that the waste is hazardous pursuant to the criteria given in chapter 11 of this division; or
- (2) fraudulently derived information is utilized or included; or
- (3) analysis or testing of the waste performed by the Department or other agencies or information available to the Department demonstrates that the waste is hazardous according to the criteria given in chapter 11 of this division.

(j) A person, upon receipt of such notice under section 66260.200(i), shall immediately cease managing the subject waste as a nonhazardous waste and shall manage the waste as hazardous waste.

That person may submit to the Department an amended notification or application. Within 30 days of receipt of an amended notification or application, the Department shall acknowledge in writing receipt of the amended notification or application. Within 60 days of receipt of an amended notification or application, the Department shall notify the sender of the notification or the applicant in writing that the notification or application is approved, disapproved, or that the notification or application is incomplete or inadequate and what additional information is needed. Upon receipt of the additional information, the Department, within 60 days of receipt of the additional information, shall notify the sender of the notification or the applicant in writing that the notification or application is approved or disapproved. The notification or application shall be considered disapproved if the additional information is not provided within 90 days from the date the information was requested. However, the sender of the notification or the applicant may request in writing an extension, up to 90 days, within which the information shall be submitted or the notification or application shall be considered disapproved.

(k) Not later than 60 days after receipt of an adequate notification or application under section 66260.200(d) or (f), the Department may request representative samples of wastes. The sender of the notification or the applicant shall maintain representative samples for that period of time. The quantity of sample submitted shall be adequate to conduct verification tests. Samples shall be collected, packaged, transported and stored in accordance with the sample management procedures in "Test Methods for Evaluating Solid Waste, Physical and Chemical Methods" (SW-846), Third Edition, incorporated by reference in section 66260.11.

(l) If the waste changes so that the prior notification or application as nonhazardous no longer adequately assesses the waste by the criteria which may render it hazardous, the waste shall be managed as hazardous.

(m) A person seeking Department concurrence with a nonhazardous determination or approval to classify and manage as nonhazardous a waste which would otherwise be a non-RCRA hazardous waste shall supply the following information to the Department:

- (1) name, mailing and billing address, location, contact person and phone number for the generating facility;
- (2) A description of the waste including a physical description, quantities produced per unit time, a detailed description of the generating process and current waste disposal method;
- (3) information on the sampling of the waste including the name and address of the firm sampling the waste, the name(s) of the person(s) sampling the waste, dates and locations of sample collection and a description of the sampling methodology and sample handling and preservation procedures;
- (4) testing laboratory information including the name, address, and certification number of the testing laboratory, the test methods used and references for locating these methods, the name(s) and qualifications of the

person(s) testing the waste, the method for preparation of laboratory samples from field samples and information needed to identify each sample;

(5) laboratory results including results from all tests required by chapter 11 of this division and a listing of the waste's constituents. Results shall include analyses from a minimum of four representative samples as specified in chapter 9 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846, 3rd Edition, U.S. Environmental Protection Agency, 1986 (incorporated by reference in section 66260.11 of this chapter);

(6) certification of the veracity of the information submitted, signed and dated by a person who is the responsible manager of the facility.

(n) Notwithstanding the time frames specified above, the Department shall not notify the applicant of the Department's decision regarding a notification submitted pursuant to subsection (d) of this section or an application submitted pursuant to subsection (f) of this section until the California Board of Equalization receives the fee assessed pursuant to Health and Safety Code section 25205.8.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code and Section 15376, Government Code. Reference: Sections 25205.8, 25141 and 25143, Health and Safety Code and Section 15376, Government Code.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).
2. Editorial correction of printing error in subsection (j) (Register 92, No. 49).

§66260.201 Classification of an Electronic Device as a Covered Electronic Device

(a) Subsequent to the dates set forth in Health and Safety Code section 25214.10.1, subdivision (d)(1) or (2) as appropriate, an electronic device that is listed in subsection (e) of this section and in subsection (c) of appendix X to chapter 11 of this division is a "covered electronic device" pursuant to chapter 8.5 of part 3 of division 30 of the Public Resources Code section 42460 et seq. unless the manufacturer of the electronic device has obtained the Department's concurrence that the electronic device is nonhazardous pursuant to subsection (d) of this section. Upon issuance of the Department's concurrence, the electronic device shall cease to be a covered electronic device. Health and Safety Code section 25214.10.1, subdivision (e)(1), prescribes the date on which the electronic device is no longer subject to chapter 8.5 of part 3 of division 30 of the Public Resources Code.

(b)(1) Each manufacturer of electronic devices sold in the State shall determine if it produces any electronic device(s) of the types listed in subsection (c) of appendix X of chapter 11 of this division, and if so, shall send an annual notice to retailers and the Board of Equalization pursuant to Health and Safety Code section 25214.10.1, subdivisions (c)(1) and (c)(2). The notice shall include all covered electronic devices listed in subsection (e) of this section that are manufactured by the manufacturer and shall include the information specified in subsection (b)(3) of this section.

(2) A manufacturer who distributes any covered electronic device for which a notice was not provided as required in subsection (b)(1) of this section, shall provide the notice to the retailer(s) no later than the date the retailer(s) first receives the covered electronic device. A manufacturer who provides a notice pursuant to subsection (b)(2) of this section remains subject to penalties for any noncompliance with subsection (b)(1) of this section.

(3) The notice shall include all of the following:

(A) The brand name(s) of each of the covered electronic devices.

(B) A general description of each of the covered electronic devices [e.g., cathode ray tube (CRT)-television, laptop computer, liquid crystal display (LCD) monitor, etc.].

(C) The viewable screen size for each covered electronic device. As used in this section, viewable screen size means the diagonal measurement of the output surface, as viewed by the operator of the covered electronic device, excluding any plastic, wood, metal, or other bezel material that surrounds the video display surface.

(D) At least one of the following: the product group or family, model number or series, part number or series, or a similar descriptor for each covered electronic device that will enable the retailers to determine that the electronic device is a covered electronic device. For example, a notification could include a statement such as "All (brand name) XYZ series, 15-inch through 21-inch, LCD-desktop computer monitors and all bundled computer systems containing these monitors," rather than delineating each XYZ monitor individually.

(c) A manufacturer who incorrectly determines that a product it produces is not a listed device or fails to make a notification pursuant to subsection (b) of this section is in violation of the requirements of this division.

(d) A manufacturer may determine that it produces an electronic device which is listed in subsection (e) of this section but which is nonhazardous, and if so, may apply to the Department for concurrence with its nonhazardous determination through the procedure set forth in section 66260.200(d).

(e) The following electronic devices are covered electronic devices pursuant to chapter 8.5 of part 3 of division 30 of the Public Resources Code section 42460 et seq., if they have a viewable screen size [as defined in subsec. (b)(3)(C) of this section] greater than four inches:

- (1) CRT-containing devices (CRT devices);
- (2) CRTs;
- (3) CRT-containing computer monitors;
- (4) LCD-containing laptop computers;
- (5) LCD-containing desktop monitors;

- (6) CRT-containing televisions;
- (7) LCD-containing televisions (excluding LCD projection televisions);
- (8) Plasma televisions (excluding plasma projection televisions); and
- (9) Portable DVD players with LCDs.

NOTE: Authority cited: Sections 25140, 25141, 25214.9, and 25214.10.2, Health and Safety Code; and Sections 42475, Public Resources Code. Reference: Sections 25140, 25141, 25214.9 and 25214.10.1, Health and Safety Code; Section 42463, Public Resources Code.

HISTORY

1. New section filed 6-7-2004 as an emergency; operative 6-7-2004 (Register 2004, No. 24). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 6-7-2006 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsections (a) and (b)(1)-(2) and amendment of Note filed 12-27-2004 as an emergency; operative 12-27-2004 (Register 2004, No. 53). Pursuant to Public Resources Code section 42475.2, a Certificate of Compliance must be transmitted to OAL by 1-1-2007 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and Note filed 4-11-2005 as an emergency; operative 4-11-2005 (Register 2005, No. 15). Pursuant to Public Resources Code section 42475.2 and Health and Safety Code section 25214.10.2, a Certificate of Compliance must be transmitted to OAL by 4-11-2007 or emergency language will be repealed by operation of law on the following day.
4. New section, including subsequent emergency amendments, refiled 6-5-2006 as an emergency; operative 6-5-2006 (Register 2006, No. 23). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
5. Editorial correction of subsection (b)(3)(D) (Register 2006, No. 24).
6. New section, including subsequent emergency amendments, refiled 5-8-2008 as an emergency; operative 5-8-2008 (Register 2008, No. 19). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
7. Certificate of Compliance as to 5-8-2008 order, including further amendment of section and Note, transmitted to OAL 12-19-2009 and filed 2-4-2009 (Register 2009, No. 6).

§66260.202 Restrictions on the Use of Heavy Metals in Covered Electronic Devices.

(a) On or after January 1, 2007, no person shall sell or offer for sale in California, a covered electronic device if the device is prohibited from being sold or offered for sale in the European Union on or after its date of manufacture due to the concentration of one or more heavy metals in the device exceeding its maximum concentration value, as specified in the Commission of European Communities' Decision of August 18, 2005, amending Directive 2002/95/EC (European Union document 2005/618/EC), or as specified in a subsequent amendment to the Directive.

(b) The prohibition in subsection (a) applies only to a covered electronic device that is manufactured on or after January 1, 2007.

(c) The prohibition in subsection (a) does not apply to a covered electronic device that is sold or offered for sale in California only for purposes of resale or offering for resale to persons outside of California.

(d) In determining the concentrations of metals for compliance with subsection (a), the Department shall not consider any cadmium, chromium, lead, or mercury, or any component containing any of those metals, which has been exempted by Directive 2002/95/EC, or by an amendment to the Directive.

(e) The prohibition established by subsection (a) of this section does not apply to a covered electronic device that would be prohibited from sale or being offered for sale in California based solely on metals used to meet consumer, health or safety requirements.

NOTE: Authority cited: Sections 25214.10 and 58012, Health and Safety Code; and Section 42475, Public Resources Code. Reference: Section 25214.10, Health and Safety Code; Section 42465.2, Public Resources Code.

HISTORY

1. New section filed 12-29-2006 as an emergency; operative 12-29-2006 (Register 2006, No. 52). Pursuant to Health and Safety Code section 25214.10.2, this emergency regulation shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.
2. Certificate of Compliance as to 12-29-2006 order, including further amendment of Note, transmitted to OAL 12-19-2009 and filed 2-4-2009 (Register

2009, No. 6).

§66260.210. Variances.

(a) The department may grant a variance from one or more of the requirements of this division and chapter 6.5 of division 20 of the Health and Safety Code pursuant to Health and Safety Code section 25143.

(b) The Department shall within 60 calendar days after receipt of an application for a variance inform the applicant in writing that the application is complete and accepted for filing, or that the application is incomplete and what specific information is required for the application to be submitted in a complete form. The Department shall, within 60 days of determining that an application is complete, inform the applicant in writing that variance is granted or denied.

(c) If the variance requested is denied, the Department shall provide to the applicant in writing the reason for the denial.

NOTE: Authority cited: Sections 208, 25141 and 25150, Health and Safety Code and Section 15376, Government Code. Reference: Sections 25141 and 25143, Health and Safety Code and Section 15376, Government Code.

HISTORY

1. New section filed 5-24-91; effective 7-1-91 (Register 91, No. 22).